

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

DARYL KEITH HOLTON

Petitioner,

v.

1:05-cv-202

RICKY BELL, Warden,

Respondent.

MEMORANDUM AND ORDER

This is a petition for the writ of habeas corpus pursuant to 28 U.S.C. §2254; the petitioner is incarcerated on death row. The matter came before the court on July 31, 2006, for a hearing on pending motions, including the *ex parte* motion by the Federal Defender for an order requiring Daryl Keith Holton to meet with psychological expert Dr. George Woods for a mental evaluation as to Mr. Holton's competency to proceed in habeas corpus litigation, at which time the federal defender agreed to unseal the motion and waive an *ex parte* hearing. Accordingly, the Clerk is **ORDERED** to **UNSEAL** the *ex parte* motion for a mental evaluation.

After considering the testimony of the Mr. Holton, argument of counsel, and the record as a whole, the court finds that it is necessary for Mr. Holton to undergo psychological evaluation and testing by an independent psychologist, and the Federal Defender's motion is **GRANTED** to that extent. To that end, the court **APPOINTS** Dr. Bruce G. Seidner, a clinical psychologist, to perform the psychological evaluation to determine Mr. Holton's competency to choose not to seek federal habeas corpus review. Daryl Keith Holton is **ORDERED** to meet with Dr. Seidner and to cooperate with him during the evaluation process. Respondent shall cooperate with Dr. Seidner by making Mr. Holton available for examination at Dr. Seidner's request and in providing a facility suitable for Mr. Holton's examination and that is approved by Dr. Seidner.

Dr. Seidner should specifically address (1) whether Mr. Holton suffers from a mental disease, disorder, or defect; (2) whether a mental disease, disorder, or defect prevents Mr. Holton from understanding his legal position and the options available to him; and (3) whether a mental disease, disorder, or defect prevents Mr. Holton from making a rational choice among his options. Dr. Seidner shall submit a written report to the court upon completion of his examination of Mr. Holton. After the court has received and reviewed Dr. Seidner's report, the report shall be made available to counsel.

Dr. Seidner has agreed to submit his written report on or before Friday, September 1, 2006. Accordingly, the Clerk is **DIRECTED** to schedule this matter for further hearing on Tuesday, September 5, 2006, at 10:00 a.m.

Dr. Seidner shall be compensated based upon his normal hourly rate, and the State of Tennessee and the Federal Defender Services of Eastern Tennessee, Inc., shall share equally the costs of Mr. Holton's evaluation by Dr. Seidner. The court will reserve ruling on the remaining pending motions until after Dr. Seidner has made his evaluation.

E N T E R:

s/ Thomas W. Phillips
United States District Judge